

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: COMMERCIAL MONEY : Case No. 1:02CV16000
CENTER, INC., EQUIPMENT :
LEASE LITIGATION : (MDL Docket No. 1490)
:
: JUDGE KATHLEEN M. O'MALLEY
:
: POST - RULING PARTIAL
: CASE MANAGEMENT PLAN
:
: THIS PLAN/ORDER APPLIES
: TO ALL CASES**

Following its rulings on the *Consolidated Motion for Judgment on the Pleadings* (Doc. 53 in 00-16000), the Court conducted a Status Conference on September 22, 2005. At that conference, the Court and the parties discussed a variety of pre-trial matters in anticipation of the Court's issuance of a new case management plan to govern this MDL.¹ Upon consideration of the parties' proposed agendas (Docs. 1728 - 1732) and their respective views expressed at the September 22, 2005 conference (as well as those expressed during several subsequent telephone conferences that the Court had with liaison counsel for the Bank and Surety Groups and certain Sureties and Banks individually), the Court hereby **ISSUES** the following new Partial Case Management Plan.

I. SCHEDULING MATTERS

A. Fact Discovery

Fact discovery has concluded and remains closed. Within 14 days after the deadline for

¹ Rather than further revise past case management plans, the Court deems it most efficient simply to issue a new plan independent of any prior plans.

amending pleadings, any party or group of parties may request upon written motion that fact discovery be reopened, even if only for a limited purpose. Such motions shall be filed on the master docket and, to the extent possible, shall be made collectively by parties in agreement on this issue. If any, responses to such motions shall be filed on the master docket within 10 days of the filing date of the motion to reopen fact discovery. Unless otherwise allowed by the Court (which a party may seek *via* a written motion), no further briefing is permitted. If necessary, the Court will set a status conference to discuss any such request that warrants oral argument.

B. Expert Discovery

Until otherwise directed by the Court, expert discovery remains **STAYED**. An expert discovery schedule shall be determined following the completion of the mediation process.

C. Mediation

With the exception of Citibank, N.A. (and JPMorgan Chase, as trustee for Citibank, N.A.) and the sureties with which it dealt, all parties are hereby **ORDERED** to engage in mediation with **RICHARD B. McQUADE, JR.**² Subject only to limitations and/or scheduling concerns raised by the mediator, the mediation process shall commence immediately and conclude no later than February 1, 2006.

As soon as possible, liaison counsel for each group shall discuss a scheduling strategy, and, thereafter, shall contact the mediator and collectively determine the most efficient manner in which to effectuate the mediation. The Court leaves the logistical aspects of this process to the parties and the mediator, but remains available if the parties and the mediator wish to

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It is the Court's understanding that Citibank, N.A. only had dealings with Ace American Insurance Company and Illinois Union Insurance Company.

discuss the matter. Except to the extent the mediator orders otherwise, mediation sessions shall be conducted in the Northern District of Ohio. Court space will be made available for that purpose if the mediator desires.

In the event mediation cannot conclude by the above deadline, the mediator may, before the mediation deadline passes, request in writing additional time to complete the mediation process; or, liaison counsel for the parties unable to comply with the mediation deadline may file before the mediation deadline passes a motion to extend the mediation deadline. Specifically, the motion shall inform the Court of the nature of the delay and the amount of time necessary to complete the mediation process.

No later than 10 days after the mediation deadline (or any extension thereof), and independent of any individual dismissal notices filed in individual cases, liaison counsel for all groups jointly shall file on the master docket a Mediation Status Report identifying all parties (and the respective case numbers), if any, that have settled their disputes.

With the exception of (1) matters relating to disputes between Citibank, N.A., and Ace American Insurance Company / Illinois Union Insurance Company, (2) NetBank's *Motion to Renew its Interest in the Consolidated Motion for Judgment on the Pleadings* (Doc. 1712) or (3) any matter relating to the mediation process itself (*e.g.*, requests or motions for extension of the mediation deadline) the Court's August 24, 2005 STAY on all further filings (Doc. 1713 – the “general filing stay”) remains in effect until the mediation process is completed (*i.e.*, the mediation deadline, including any extension thereof). The Court will proceed to address the matters as to (1) and (2) above.

D. Amendment of Pleadings

All motions for leave to amend pleadings shall be filed no later than 14 days after the mediation deadline (or extended mediation deadline, if applicable), which is when the “general filing stay” will self-terminate.

E. Dispositive Motions

The briefing schedule for dispositive motions shall be determined following the completion of the mediation process.

II. OTHER MATTERS

A. Rule 54 and/or Rule 58 Proposed Partial Judgments

As a result of the Court’s August 19, 2005 rulings (Docs. 1708 and 1709) on the *Consolidated Motions for Judgment on the Pleadings*, those parties justified in seeking full or partial final judgment (other than Citibank, N.A.) shall so move the Court, and submit with their motions proposed full or partial final judgments, within 14 days after the mediation deadline (or extended deadline).

B. Venue / Jurisdictional / Remand Motions

The briefing schedule for venue, jurisdictional and remand motions shall be determined following the completion of the mediation process.

C. Special Master

With liaison counsel’s assistance, the Court continues to investigate the possible appointment of a Special Master to assist the Court on a going forward basis. The Court has not yet reached a decision on this matter.

IT IS SO ORDERED.

s/Kathleen M. O'Malley
KATHLEEN McDONALD O'MALLEY
UNITED STATES DISTRICT JUDGE

DATED: October 31, 2005